

REMARKS

Double Patenting

Claims 39-59 have been rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 19-30 of US Patent No. 7,105,779. In response, applicant submits herewith a Terminal Disclaimer with respect to this patent.

Claim Rejections - 35 USC §102

Claims 39-43, 45-54 and 59 are rejected as being anticipated by Arnold et al. (6,011,243) on the basis that the operation of the heat source and other elements of the invention by the controller is nothing more than a desired operation of the device, and that such operation is not structurally limiting and receives no patentable weight in an apparatus claim. Applicant respectfully disagrees.

Claim 39 does not say that the control mechanism is "programmable" to perform the three different phases of heating. Rather, the claim clearly and positively states that the control mechanism is "programmed" (emphasis supplied) to carry out the three specified phases of heating. This programming is not a hypothetical operation; it is a structural limitation that cannot be ignored, i.e., an actual program embedded in the control mechanism. Even if the oven of Arnold et al. is capable of being programmed to carry out the claimed heating phases (and this hypothetical is not conceded by applicant), there is no disclosure or suggestion that the oven is in fact "programmed" to perform this heating. Without this structural element, i.e., a program embedded in the control mechanism, there is no anticipation of the claimed invention by Arnold et al. To find otherwise would be to deny patent protection to all control programs, regardless of inventiveness, simply because someone with the hindsight knowledge of an invention has the capability of programming a controller to carry out the same methodology. This is neither the law nor the intent of the law.

Claim Rejections - 35 USC §103

Claims 55 and 56 are rejected as unpatentable over Arnold et al. in view of Fortmann et al. (5,852,967). Applicant respectfully disagrees.

Claims 55 and 56 depend from claim 39 which recites the structural limitation of a control mechanism which is actually programmed (i.e., contains an embedded program) to vary the delivery of heat by the heat sources in the compartments to deliver heat in the prescribed manner, that is, in three separate phases during which a heat source operates at three distinct and different levels. For example, as illustrated in Fig. 9B and described in paragraph [0040] of the pending application, a heat source is operated at 100% of maximum power during a first phase P1 of a holding duration D to bring the temperature of the pre-cooked food up to the desired holding temperature as quickly as possible, at 0% of maximum power during a second phase P2 of the holding duration to allow the temperature of the food to stabilize at the selected holding temperature, and at 25% of maximum power during a third phase P3 of the holding duration to maintain the food at the selected holding temperature while using less power than in the first phase to extend the quality of the food. In Arnold et al., the control system controls the top and bottom heater plates 18a, 18b in each passageway 14a-d to maintain the temperature of each passageway and the food stored there within a predetermined temperature range (see paragraph bridging columns 4 and 5). However, there is no disclosure or suggestion of applicant's 3-phase, 3-energy level feature and the attendant advantages thereof. The patent to Fortmann et al. is similarly devoid of any such teaching.

Accordingly, claims 55 and 56 are submitted to be allowable.

Claims 44, 57 and 58 are rejected as unpatentable over Arnold et al. in view of Shei et al. (6,175,099). Applicant respectfully disagrees.

Claims 44, 57 and 58 depend, either directly or indirectly, from claim 39 which recites the structural limitation of a control mechanism which is actually programmed (i.e., contains an embedded program) to vary the delivery of heat by the heat sources in the compartments to deliver heat in the prescribed manner, that is, in three separate phases during which a heat source operates at three distinct and different levels. As explained above, Arnold et al. fails to show or suggest this unique feature, and the Shei et al. patent is similarly devoid of any such teaching.

Accordingly, claims 44, 57 and 58 are submitted to be allowable.

CONCLUSION

In view of the foregoing, applicant requests that the rejections of the claims be withdrawn and that the application be allowed.

Respectfully submitted,

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